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HIGH COURT OF SIKKIM
GANGTOK

No.29/HCS

Dated : 22/08/2006

NOTIFICATION

In exercise of the powers conferred by Section 34 of the Advocates Act, 1961, the High Court of Sikkim, hereby makes the following Rules: -

1. **Short Title and commencement.**

(i) These rules may be called the High Court of Sikkim (Conditions of Practice) Rules, 2006.

(ii) These rules shall come into force with effect from the date of their publication in the official gazette.

2. **Definitions:-** In these rules, unless the context otherwise requires:-

(i) "Court" means the High Court of Sikkim, and a Court of civil or criminal jurisdiction subordinate to the High Court,

(ii) "Advocate" means an Advocate entered in any roll under the provisions of the Advocates Act, 1961, as amended from time to time and shall include a partnership or a firm of Advocates,

(iii) "State Bar Council" means the Bar Council of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Sikkim, Nagaland and Tripura.

3. **Right to appear, plead or act for any person in any Court.**

(i) Save as otherwise provided for in any law for the time being in force, no advocate shall be entitled to appear, plead or act for any person in any Court in any proceeding, unless the advocate files an appointment in writing signed and dated by such person or his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment and signed by the advocate in token of its acceptance.

Provided that, where an advocate has already filed an appointment in any proceeding, it shall be sufficient for another advocate, who is engaged to appear in the proceedings merely for the purpose of pleading, to file a memorandum of appearance.

Provided further, that nothing herein contained shall apply to an advocate who has been requested by the Court to assist the Court as amicus curiae in any case or proceeding or who has been appointed

at the expense of the State to defend an accused person in a criminal proceeding or to represent either of the parties in civil proceeding.

(ii) An advocate at the time of acceptance of his appointment shall also endorse on it his address, which address shall be regarded as one for service within the meaning of rule 5 of Order 3 of the Code of Civil Procedure, 1908.

Provided that, where more than one advocate accept the appointment, it shall be sufficient for one of them to endorse his address, which address shall be regarded as one for service within the meaning of rule 5 of Order 3 of the Code of Civil Procedure, 1908.

(iii) Where the same advocate is retained for the party in two or more connected proceedings, a separate appointment or memorandum of appearance shall be filed in each of the several connected proceedings, notwithstanding that the same advocate is retained for the party in all the connected proceedings.

(iv) Where an advocate appointed by a party in any of the proceedings is prevented by reasonable cause from appearing and conducting the proceedings at any hearing, he may instruct another advocate to appear for him at that hearing, with the leave of the Court.

4. <u>Procedure in case of appearance by firm or partnership of advocates.</u>

(1) The appointment of a firm or partnership of advocates may be accepted by any partner on behalf of the firm.

(2) The acceptance of an appointment on behalf of a firm or partnership of advocates shall be indicated by a partner affixing his own signature as a partner on behalf of the firm or partnership of advocates.

(3) No such firm or partnership shall be entitled to appear, act or plead in any Court unless all the partners thereof are entitled to appear, act or plead in such Court.

(4) The name of the firm or partnership may contain the names of the persons who were or are members of the partnership but of no others.

(5) The word 'and company' shall not be affixed to the name of any such partnership or firm.

(6) The names of all the members of the firm shall be recorded with the Registrar General/ Registrar of the High Court and/or the District Judge, as the case may be, and the State Bar Council, and the names of all the partners shall also be set out in all professional communications issued by the partners of the firm.

(7) The firm of advocates shall notify to the Registrar General/Registrar of High Court and/or the District Judge, as the case may be and the State Bar Council, any change in the composition of the firm or the fact of its dissolution as soon as may be from the date on which such change occurs or its dissolution takes place.

(8) Every partner of the firm of advocates shall be bound to disclose the names of all the partners of the firm whenever called upon to do so by the Registrar General/Registrar of High Court, the District Judge, the State Bar Council, any Court or any party for or against whom the firm or any partner thereof has filed the appointment or memorandum of appearance.

(9) In every case where a partner of a firm of advocates signs any document or writing on behalf of the firm he shall do so in the name of the partnership and shall authenticate the same by affixing his own signature as partner.

(10) Neither the firm of advocates nor any partner thereof shall advise a party to appear, act or plead on behalf of a party in any matter or proceeding where the opposite party is represented by any other partner of the firm or by the firm itself.

5. **Procedure where the advocate is not on the roll of the Bar Council of the State.**

An advocate who is not on the roll of advocates of the Bar Council of the State in which the Court is situate, shall not appear, act or plead in such Court, unless he files an appointment along with an advocate who is on the roll of such State Bar Council and who is ordinarily practicing in such Court.

6. **Procedure where more than one advocate appear.**

In case in which a party is represented by more than one advocate, it shall benecessary for all of them to file a joint appointment or for each of them to file a separate one.

Provided that where an appointment in favour of one advocate has already been filed, a fresh appointment in favour of all the advocates accepted by all of them in substitution for the original or a separate appointment for each of the additional advocates shall be filed.

7. **Appointment to be in force until determined.**

(1) In civil cases, the appointment of an advocate, unless otherwise limited, shall be deemed to be in force to the extent provided in that behalf by rule 4 of Order 3 of the Code of Civil Procedure, 1908.

(2) In criminal cases, the appointment of an advocate, unless otherwise limited, shall be deemed to be in force until determined with the leave of the Court by writing signed by the party or the advocate, as the case may be and filed in Court, or until the party or the advocate dies, or until all proceedings in the case are ended so far as regards the party.

(3) For the purposes of sub-rule (2), a case shall be deemed to mean every kind of enquiry, trial or proceeding before a criminal Court, whether instituted on a police report or otherwise than on a police report and shall include-

(i) an application for bail or reduction, enhancement or cancellation of bail in the case;
(ii) an application for transfer of the case from one Court to another;
(iii) an application for stay of the case pending disposal of a civil proceeding in respect of the same transaction out of which the case arises;
(iv) an application for suspension, postponement or stay of the execution of the order or sentence passed in the case;
(v) an application for the return, restoration or restitution of the property as per the order of disposal of property passed in the case;
(vi) an application for leave to appeal against an order of acquittal passed in the case;
(vii) any appeal or application for revision against any order or sentence passed in the case;
(viii) a reference arising out of the case;
(ix) an application for review of an order or sentence passed in the case or in an appeal, reference or revision arising out of the case;
(x) an application for making concurrent sentences awarded in the case or in appeal, reference, revision or review arising out of the case;
(xi) an application relating to or incidental to or arising in or out of any appeal, reference, revision or review arising in or out of the case (including an application for leave to appeal to the Supreme Court);
(xii) any application or act for obtaining copies of documents or for the return of articles or documents produced or filed in the case or in any of the proceedings mentioned hereinbefore;
(xiii) any application or act for obtaining the withdrawal or the refund or payment of or out of the moneys paid or deposited in the court in connection with the case or any of the proceedings

mentioned hereinbefore (including moneys paid or deposited for covering the costs of t preparation and the printing of the Transcript Record of Appeal to the Supreme court);

(xiv) any application for the refund of or out of the moneys paid or recovered as fine or for the return, restitution or restoration of the property forfeited or confiscated in the case or in any appeal, reference, revision or review arising out of the case as per final orders passed in that behalf;

(xv) any application for expunging remarks or observations on the record of or made in the judgment in the case or any appeal, reference, revision or review arising out of the case; and

(xvi) any application or proceeding for sanctioning prosecution under Chapter XXXV of the Code of Criminal Procedure, 1898 or any appeal or revision arising from and out of any order passed in such an application or proceeding:

Provided that, where the venue of the case is shifted from one Court (Subordinate or otherwise) to another, the advocate filing the appointment referred to in sub-Rr. (1) and (2) of Rule 3 in the former Court shall not be entitled to appear, act or plead in the latter court, unless he files or has filed a memorandum signed by him in the latter court that he has instructions from his client to appear, act and plead in that court.

8. <u>Requirement of consent to appear.</u>

(1) Except when specially authorized by the Court or by consent of the party, an advocate, who has advised in connection with the institution of a suit, appeal or other proceedings or has drawn up pleadings in connection with such matter, or has during the progress of any suit, appeal, or other proceeding appeared, acted or pleaded for a party, shall not unless he first gives the party whom he has advised or for whom he has drawn up pleadings, appeared, acted or pleaded, an opportunity of engaging his services, appear or act or plead in such suit, appeal or other proceeding or in an appeal or application for revision arising therefrom or in any matter connected therewith for any person whose interest is in any manner in conflict with that of such party:

Provided that, the consent of the party may be presumed if he engages another advocate to appear, act or plead for him in such suit, appeal or other proceeding without offering an engagement to the advocate whose services were originally engaged by him or on his behalf.

(2) Where it appears on the face of the record that the appearance of an advocate in any proceeding for any party is prejudicial to the interest of the other party on account of the reasons mentioned in sub-rule (1) above, the Court may refuse to permit the appearance to be filed or cancel such appearance if it has already been filed after giving the said advocate an opportunity of being heard.

(3) An advocate who discloses to any party information confided to him in his capacity as an advocate by another party without the latter's consent shall not be protected merely by reason of his being permitted to appear, act or plead for the said party.

(4) When a suit or other proceeding is remitted by order of an Appellate Court for a rehearing or finding on an issue, the proceeding on such order shall be regarded as a further proceeding in the trial of the suit or proceeding, and consequently an advocate shall not change sides and accept an appointment for the party opponent to the one for whom he appeared at the first hearing.

9. <u>Procedure where another advocate is already on record.</u>

No advocate shall be permitted to file an appointment or memorandum of appearance in any proceeding in which another advocate is already on record for the same party, save with the consent of the former advocate on record or the leave of the Court, unless the former advocate has ceased to practice or has by reason of infirmity of mind or body or otherwise becomes unable to continue to act.

10. Correction of any clerical error.

An advocate may correct any clerical error in any proceeding with the previous permission of the Registrar General/Registrar or any officer of the Court specially empowered in this behalf by the Court obtained on a memorandum stating the correction desired.

11. Restriction to act as recognized agent.

No advocate who has been debarred or suspended or whose name has been struck off the Roll of Advocates shall be permitted to act as a recognized agent of any party within the meaning of Order 3 of the Code of Civil Procedure, 1908.

12. Restriction on advocate found guilty of contempt of court.

No advocate who has been found guilty of contempt of Court shall be permitted to appear, act or plead in any Court unless he has purged himself of contempt.

13. Prescribed dress.

Advocates appearing before the Court shall wear the following dress: -

(1) Advocates other than lady advocates:

(a) Black buttoned up coat (Black Chapkan, Achkan or Sherwani), Barrister's gown or Black gown prescribed by the University for degree of Bachelor of Laws with bands, or

(b) Black open collar coat, white shirt, stiff white collar with Barrister's gown or a Black Gown prescribed by the University for the degree of Bachelor of Laws and bands.

(2) Lady Advocates:

Regional dress of subdued colour or colours with Black coat and Barrister's gown, or the Black Gown prescribed by the University for the degree of Bachelor of Laws, stiff white collar and bands.

Provided that, the Advocates who have been designated as Senior Advocates, shall wear the dress prescribed for Senior Advocates of the country.

Provided further, that an advocate who appears in person as an accused in any criminal proceeding, against him or as a party in any civil proceeding or writ proceeding shall not wear the dress as prescribed above.

14. Restriction to go on strike.

The Advocates shall not go on strikes except in exceptional cases as enumerated by the Apex Court. If the Advocate/Advocates Association has/have any grievance/complaints such Advocate/ Association of Advocates shall address a written representation to the Hon'ble the Chief Justice.

The Hon'ble the Chief Justice shall then constitute a committee for redressal of such grievances/ complaints which shall consist of the following as members in addition to any other member to be nominated.

1. The Hon'ble the Chief Justice or a Judge of the High Court nominated by the Chief Justice.
2. The Advocate General of the State.
3. The Principal District Judge of the concerned district.
4. The President of the concerned Bar Association.
5. Two representatives nominated by the Bar Council of the State of Sikkim.
6. One representative nominated by the President of the Sikkim High Court Bar Association.

S.W. LEPCHA
REGISTRAR GENERAL
HIGH COURT OF SIKKIM